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ALEXANDER L. STEVAS,

No. 82-5576

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JEFFREY LEE PICKETT, by next friend,
FRANCES ANNETTE PICKETT, and
FRANCES ANNETTE PICKETT, *Appellants*,

v.

BRAXTON BROWN, *Appellee*,

and

WILLIAM M. LEECH, JR., *Intervenor-Appellee*.

Appeal From The Supreme Court Of Tennessee

APPELLANT'S BRIEF ON THE MERITS

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QUESTIONS PRESENTED

I.

Whether the two-year statute of limitations of Tennessee Code Annotated, section 36-224 (2) governing paternity and child support actions for illegitimate children violates the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

II.

Whether the two-year statute of limitations of Tennessee Code Annotated, section 36-224 (2) governing paternity and child support actions for illegitimate children violates the due process clause of the Fourteenth Amendment of the Constitution of the United States.

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Appeal From The Supreme Court Of Tennessee

APPELLANT'S BRIEF ON THE MERITS

OPINIONS BELOW

The opinion of the Juvenile Court of Memphis and Shelby County, Tennessee is not reported (J.A. 13).

The opinion of the Supreme Court of Tennessee is reported 638 S.W.2d 369 (J.A. 21).

STATEMENT OF JURISDICTION

The decision of the Supreme Court of Tennessee entered August 30, 1982 (J.A. 42), dismissing appellant's cause of action, forever denies appellants the right to sue for paternal child support and is a final judgment.

A notice of appeal to this Court was filed in the Supreme Court of Tennessee, at Jackson, Tennessee, on September 9, 1982 (J.A. 43).

This appeal was docketed on October 18, 1982, in this Court, within 90 days from the entry of final judgment by the Supreme Court of Tennessee (J.A. 44). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

TABLE OF STATUTES

Chapter 186, Public Acts of Tennessee for 1955, caption:

> An act to provide for the establishment of paternity of a child born out of wedlock and the consequences thereof, for the support and education of a child born out of wedlock, and to provide for enforcement of support orders * * *
> 10

Tennessee Code Annotated, section 28-1-106:

> PERSONS UNDER DISABILITY ON ACCRUAL OF RIGHT. If the person entitled to commence an action is, at the time the cause of action accrued, either within the age of eighteen (18) years, or of

unsound mind, such person, or his representatives and privies, as the case may be, may commence the action, after the removal of such disability, within the time of limitation for the particular cause of action, unless it exceed three (3) years, and in that case within three (3) years from the removal of such disability.

..... 18

Tennessee Code Annotated, section 34-101:

Fathers and mothers are joint natural guardians of their minor children, and they are equally and jointly charged with their care, nurture, welfare, education, and support, and also with the care, management and expenditure of their estates. * * *

..... 20

Tennessee Code Annotated, section 36-223:

The father of a child born out of wedlock is liable for the necessary support and education of the child. * * *

..... 20

Tennessee Code Annotated, section 36-828:

In a suit for annulment, divorce or separate maintenance, where the custody of a minor child or minor children is a question, the court may, notwithstanding a decree for annulment, divorce or separate maintenance is denied, award the care, custody and control of such child or children to either of the parties to the suit, or to some suitable person, as the welfare and interest of the child or children may demand, and the court may decree that suitable support be made by the natural parents or those who stand in the place of the natural parents by adoption. Such decree shall remain within the control of the court and be subject to such changes or modification as the exigencies of the case may require.

..... 20-21

Tennessee Code Annotated, section 36-224 (1):

A petition to establish paternity of a child, to change the name of the child if it is desired, and to compel the father to furnish support and education for the child, in accordance with this chapter may be filed by the mother, or her personal representative, or, if the child is likely to become a public charge by the state department of human services or by any person. Said petition may be filed in the county where the mother or child resides or is found or in the country where the putative father resides or is found. The fact that the child was born outside this state shall not be a bar to filing a petition against the putative father. After the death of the mother or in case of her disability said petition may be filed by the child acting through a guardian or next friend.

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Tennessee Code Annotated, section 36-224 (2):

(2) Proceedings to establish the paternity of the child and to compel the father to furnish support and education for the child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than two (2) years from the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support. Provided, however, that the Department of Human Services or any person shall be empowered to bring a suit in behalf of any child under the age of eighteen (18) who is, or is liable to become a public charge.

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STATEMENT OF THE CASE

Frances Annette Pickett filed a petition (J.A. 3) to establish paternity pursuant to Tennessee Code Annotated § 36-224, alleging that Braxton Brown is the natural father of her son, Jeffrey Lee Pickett, born November 1, 1968. This petition was filed May 24, 1978. The purpose of the suit was to establish the parent-child relationship between Braxton Brown and Jeffrey Lee Pickett and to obtain child support for said child.

Braxton Brown denied paternity and moved to dismiss the petition based upon the two-year statute of limitations as set out in Tennessee Code Annotated § 36-224(2)(J.A. 18). In response to the motion to dismiss, Frances Pickett filed a motion challenging the constitutionality of Tennessee Code Annotated § 36-224(2) and moved the court to amend the petition to be brought in the name of her son (J.A. 5). The attorney general of Tennessee intervened to uphold the constitutionality of the state statute.

The parties stipulated that Jeffrey Lee Pickett was not a public charge, and that the defendant, Braxton Brown, had never acknowledged said child nor provided support.

The Honorable Kenneth A. Turner, Judge, overruled the defendant's motion to dismiss declaring said statute to be unconstitutional. The trial court found that the statute discriminated against illegitimate as opposed to legitimate children, and that the statute also discriminated against illegitimate children not a public charge as opposed to illegitimate children who are a public charge. The judge further ordered that the petition be brought in the name of the minor child by Frances Pickett as next friend. This order was entered April 24, 1980 (J.A. 13).

The state of Tennessee and the defendant appealed the trial court's ruling to the Supreme Court of Tennessee. On August 30, 1982, the Supreme Court of Tennessee entered an opinion which upheld the constitutionality of the two-year statute of limitations in non-welfare cases. The trial court's opinion was reversed, and the petition to legitimate the child was dismissed (J.A. 21).

SUMMARY OF ARGUMENT

I. The two-year statute of limitations in Tennessee's paternity statute does not bear a substantial relationship to a permissible state objective. The statute discriminates between legitimate and illegitimate children seeking support from their natural fathers. The statute also discriminates between illegitimate children receiving welfare and illegitimate children who do not receive welfare.

In Tennessee an illegitimate child receiving welfare may have his (or her) paternity established any time prior to his eighteenth birthday. A legitimate child may obtain support from its parents any time prior to its eighteenth birthday. Only the illegitimate child who is not receiving welfare is limited to two years after his birth in which time he must have a paternity suit filed or forever lose the right to paternal support.

This discrimination cannot be justified by any legitimate state interest and is thus unconstitutional.

II. Tennessee's statutory scheme in paternity cases denies appellants due process of the law. An illegitimate child not receiving welfare can lose his right to paternal support by his mother's failure to file a paternity suit within two years after the child is born. It is unjust, and a denial of due process, to place an illegitimate child's right to paternal support solely in the hands of its mother.

Statistically, mothers of illegitimate children are often young and poor. Because of social pressure or financial inability, or ignorance, she may not file a suit within the two-year period. This denies the child to a fair and reasonable opportunity to be heard concerning his paternity and support rights from his father.

A mother in Tennessee has a right to financial assistance from her child's father throughout the child's minority. Mothers of illegitimate children on welfare are protected from loss of this right; but mothers who fail to apply (or do not need to apply) for welfare are not informed of the two-year statute and thus may lose their right to assistance from the child's father.

In Tennessee the mother of a legitimate child, and the mother of an illegitimate child on welfare, cannot waive her child's right to paternal support. Only the non-welfare illegitimate child can lose this right by its mother's nonaction. This result is not supported by any rational state interest or compelling need and as such is unconstitutional.

ARGUMENT

BACKGROUND STATISTICS AND INFORMATION CONCERNING CHILDREN BORN OUT OF WEDLOCK.

A. Statistics.

Between 1961 and 1974, the rate of out-of-wedlock child-bearing increased by 75 percent among 14 to 17 year olds nationally.[1] For the country as a whole, the birth rate from 1966 to 1975 declined for all age groups other than girls between 15 to 17. The 15 to 17 year old group

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[1] "11 Million Teenagers," The Alan Guttmacher Institute, 1976, at 13.

increased their birth rate by 21.7 percent during this period of time,[2] 1966 to 1975.[3]

When enacting the 1974 amendments to Title IV of the Social Security Act[4] Congress found ". . . 3.7 million AFDC recipients today are found in families where the father is not married to the mother. It is disturbing to note that from 1971 to 1973, there has been a 21.7 percent increase in the number of AFDC families . . . in which the father was not married to the mother."[5]

Statistics for Shelby County, Tennessee, from 1972 to 1981, show a total of 49,286 illegitimate births. Of these, 19,914 illegitimate births were to teenage girls. In 1981, 58.5 percent of all non-white births were to unwed mothers. In 1981 there were 88 illegitimate births to girls under 15 and 868 illegitimate births to girls from the ages of 15 to 17.[6]

This statistical information not only shows the vast numbers of illegitimate children born in Shelby County, Tennessee, but more important, shows that a large num-

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[2] "Vital Statistics Report, Natality Statistics," Vol. 26, No. 5, September 8, 1977, National Center for Health Statistics.

[3] Every effort has been made herein to provide the most recent statistical information available. The variance in dates is not designed to mislead the reader nor has plaintiff chosen only those dates or periods of time which help her argument. Rather, the differing periods of time occur because of the varying sources from which the information was obtained, and limited resources for this data.

[4] Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. § 651 *et. seq.*

[5] 1974 U.S. Code Cong. and Adm. News, p. 8146.

[6] These figures were calculated from statistics found in the Memphis-Shelby County Health Department Annual Report for 1979 and 1981. A copy of portions of these documents is included in the appendix at pages 1-5.

ber of these illegitimate children are born to girls who are minors (under the age of 18).[7]

B. Infants Are Entitled To Special Protection Of The Law.

"From the earliest time, infants were regarded as entitled to the especial protection of the state, and the King, as 'parens patriae,' was parent in a peculiar sense, of all orphaned or dependent children within the realm." (27 Am. Jur. § 102, at 823) Now, the state acts as "parens patriae" of all the children within its jurisdiction.[8]

The public interest is heavily involved in paternity proceedings. "This is far more than just a suit between these particular parties involving private rights only. The public policy of the state is involved in any bastardy hearing." (*Tennessee Department of Human Services*,

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[7] In effect, the two-year statute of limitations contained in Tennessee Code Annotated § 36-224(2) often requires a mother to act within a period of time during which she is a legally incompetent minor. The rights of an illegitimate child are thus placed in the hands of another minor child. The right of legitimacy and support may be lost before either mother or child reaches legal majority.

[8] A thorough examination of the doctrine of "Parens Patriae" is found in "Note: The *Parens Patriae* Theory and Its Effect on the Constitutional Limits of Juvenile Court Powers" 27 U. Pitt. L.R. 894-914. In part the Note finds that the King did not exercise the power as a parent but rather he, through the courts, exercised a "anti-parental" right. Limits were placed upon the rights of guardians to commit waste of the property of their ward.

In the case on appeal, the Tennessee Supreme Court dictates that an illegitimate child's mother should be allowed to commit a "waste" of her child's property by electing not to pursue a paternity suit within two years after the birth of her son. *Pickett* gives this right solely to the mother denying any person a right to interfere with her decision so long as the child does not become a public charge. (J.A. 34, 37, 38-39).

Assignee of Donna Rogers v. *Major Vaughn*, (Tenn. 1980) 595 S.W.2d 62, 64).

C. What Is The State's Interest With Regard To Paternity?

Chapter 186 of the Public Acts of Tennessee, 1955 begins:

> An act to provide for the establishment of paternity of a child born out of wedlock and the consequences thereof, for the support and education of a child born out of wedlock, and to provide for enforcement of support orders * * *

The public interest is twofold:

1. to ensure that the natural parents of a child do not cast their offspring upon the state for support; and,

2. to protect the minor child's legal rights to support, education, and legitimacy; to protect the child from parents whose concerns and interests are often adverse to the child's and society's as a whole.

There is a national interest involved in these cases as well. Congress has found that a child has a right to have its paternity ascertained and a right to support from its father.

> In taking the position that a child born out of wedlock has a right to have its paternity ascertained in a fair and efficient manner, the committee acknowledges that legislation must recognize the interest primarily at stake in the paternity action to be that of the child. Since the child cannot act on his own behalf in the short time after his birth, when there is hope of finding its father, the Committee feels a mechanism should be provided to ascertain the child's paternity . . .[9]

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[9] Legislative History, Social Services Amendments, 1974 U.S. Code Cong. and Adm. News, p. 8154-8155.

Tennessee's Two-Year Statute Of Limitations In Paternity Cases Violates The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution.

Under Tennessee Code Annotated § 34-101, 36-223, and 36-828, legitimate children have an on-going judicially enforceable cause of action for child support until they reach the age of eighteen. This right of support exists against both parents. The mother of a legitimate child can not by her inaction waive the statutory obligation of the child's father to this support. (*Rose Funeral Home, Inc.* v. *Julian*, 144 S.W.2d 755, 757 (Tenn. 1940)).

As this court stated in *Gomez* v. *Perez*, 409 U.S. 535 (1973):

> Once a state posits a judicially enforceable right on behalf of children to needed support from their natural fathers, there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father is not married to its mother.

409 U.S. at 538

Implicit in *Gomez* was the notion that the state must accord to an illegitimate child the right to institute a judicial proceeding for the purpose of proving the identity of a biological father in order to obtain a judicially enforceable support right otherwise accorded to legitimate children generally.

The statute at issue in this case, Tennessee Code Annotated § 36-224, provides the only method whereby an illegitimate child may establish paternity and receive child support. Section 36-224 requires that any law suit to establish paternity must be filed before the illegitimate child is two years of age (unless the child is acknowledged in writing or by the furnishing of support).

In *Matthews* v. *Lucas*, 427 U.S. 495 (1976), the court held that discrimination against illegitimate children is not subject to an equal protection "strict scrutiny" test, but also made clear that normal "rational basis" equal protection review is inappropriate. Rather, the court articulated a form of heightened scrutiny review applicable to discrimination on the basis of illegitimacy. The opinion emphasized that the standard of review applied is "not a toothless one." *Matthews* v. *Lucas*, 427 U.S. 495, 510 (1976).

The court in *Lucas* relied on a perception of the disfavored status of the legitimacy and the resulting discrimination and reaffirmed *Weber* v. *Aetna Casualty and Surety Company*, 406 U.S. 164 (1972); *Gomez* v. *Perez*, 409 U.S. 535 (1973); and *Jiminez* v. *Weinberger*, 417 U.S. 628 (1974), all of which subjected classifications based on illegitimacy to rigorous scrutiny and found them to offend the equal protection clause.

The statute in *Lucas* survived rigorous review because it granted benefits to illegitimate children who met any of several alternative criteria for entitlement. This statute was based on "reasonable impurical judgments that [were] consistent with a design to qualify entitlement" [427 U.S. at 510] and accorded illegitimate children a full opportunity to present relevant evidence. According to the majority opinion, the statute in *Lucas* did ". . . not broadly discriminate between legitimate and illegitimates without more, but [was] carefully tuned to alternative considerations." [427 U.S. at 513]. The court reaffirmed its previous statements that ". . . the legal status of illegitimacy, however defined, is like race or national origin, a characteristic determined by causes not within the control of the illegitimate individual, and it bears no relation to the individual's ability to participate in and

contribute to society," and that imposing disabilities on innocent children simply because of their birth status remains "illogical and unjust." *Lucas*, 427 U.S. at 505.

In *Trimble* v. *Gordon*, 430 U.S. 762, 767 (1977), the court stated that "illegitimacy is analogous in many respects to the personal characteristics that have been held to be suspect when used as the basis of statutory differentiations [but] the analogy was not sufficient to require 'our most exacting scrutiny.' " Nevertheless, "[i]n a case like this, the equal protection clause requires more than the mere incantation of a proper state purpose." (430 U.S. at 769).

Lalli v. *Lalli*, 439 U.S. 259, 265 (1978) similarly held that classifications based on illegitimacy "are not subject to 'strict scrutiny,' [but] they nevertheless are invalid under the Fourteenth Amendment if they are not substantially related to permissible state interests."[10] Thus, "a statute placing exceptional burdens on illegitimate children in the furtherance of proper state objectives must be more 'carefully tuned to alternative considerations.' " *Lalli*, 439 U.S. at 266, quoting *Trimble* v. *Gordon* and *Matthews* v. *Lucas*. Further, the relation of the statutory discrimination to state interests must be "evident and substantial." *Lalli*, supra 439 U.S. at 268.

In sum, the court has upheld statutory classifications discriminating against illegitimate children only "[i]n cases where statutory classifications effecting illegitimates are so precisely structured as to further a sufficiently adequate state interest . . ." *Parham* v. *Hughes*, 441 U.S. at 347, 352 n. 5 (1979).

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[10] "Such restrictions will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest." *Mills* v. *Habluetzel* 102 S.Ct. 1549 (1982).

This court has always subjected to special scrutiny invidious discrimination against groups on the basis of the conditions of their birth or ancestry. See *Loving* v. *Virginia*, 388 U.S. 1, 11 (1967); *Oyama* v. *California*, 332 U.S. 633, 644-646 (1948); *Hirabayashi* v. *U.S.*, 320 U.S. 81, 100 (1943).[11]

Illegitimacy subjects a child to "a stigma of inferiority and a badge of opprobrium." Note, "Developments in the Law of Equal Protection," 82 Harv. L. Rev. 1065, 1127 (1969). See also *Jimenez v. Weinberger*, 417 U.S. 628, 632 (1974); Krause, *Illegitimacy, Law and Social Policy* (1971); Krause; "Equal Protection for the Illegitimate," 65 Mich. L. Rev. 477 (1967).[12]

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[11] See also: *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978), *Frontiero* v. *Richardson*, 411 U.S. 677 (1973). One hundred years ago this court recognized that the constitutional prohibition against forfeitures of the blood was a reaction to the "rank injustice" when "innocent children were made to suffer because of the offense of their ancestor. *Wallach* v. *Van Riswick*, 92 U.S. 202, 210 (1875). Discrimination against illegitimate children has been compared to attaching "an archaic corruption of the blood, a form of bill of attainder," *King* v. *Smith*, 392 U.S. 309, 336 n. 5 (1961), Douglas, J., concurring, and with a "badge of ignobility," violating Art. 1, § 9, Clause 8 of the Constitution, *Eskra* v. *Morton*, 524 F.2d 913 n. 8 (7th Cir. 1975).

[12] When children are stigmatized because of a condition of their birth, the stigma generates a feeling of inferiority that may inflict long term damage, as this court recognized in *Brown* v. *Board of Education*, 347 U.S. 483, 494 (1954). Legal enforcement of the stigma should be scrutinized with particular care.

> To give the illegitimate child an inferior status because, through no fault of his own, his parents were never joined in an easily dissolved union is a hypocracy which can only frustrate and alienate him from society which created his inferiority.

Marcus, "Equal Protection: The Custody of the Illegitimate Child," 11 Journal of Family Law 1, 17-18 (1971). "Illegitimate children

Heightened scrutiny has been found necessary and appropriate by this court in enforcing the equal protection clause on behalf of these children who have suffered "through the ages society's 'illogical and unjust' condemnation," *Weber*, supra, 406 U.S. at 175.

A. Tennessee Code Annotated § 36-224(2)'s "Wealth Based" Discrimination Is A Violation Of The Fourteenth Amendment To The United States Constitution Because It Is Not Substantially Related To A Permissible State Interest.

1) THE STATUTE IS DISCRIMINATORY.

Tennessee Code Annotated § 36-224(2) reads:

> (2) Proceedings to establish the paternity of the child and to compel the father to furnish support and education for the child may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than two (2) years from the birth of the child, unless paternity has been acknowledged by the father in writing or by the furnishing of support. Provided, however, that the Department of Human Services or any person shall be empowered to bring a suit in behalf of any child under the age of eighteen (18) who is, or is liable to become a public charge.

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become increasingly aware of their social inferior status, and show differences in adjustment, as well as lower I.Q. the differences increase with age." Jenkins, "An Experimental Study of the Relationship of Legitimate and Illegitimate Birth Status to School and Personal and Social Adjustment of Negro Children," 64 American Journal of Sociology 196 (1958).

Two classes are created by this statute. Children who are, or are likely to become[13] public charges, *versus* children who are not public charges. Both classes of children are similarly situated. That is, each class consists of children born out of wedlock. The sole determining difference is wealth or perhaps social standing.

If a child born out of wedlock is adequately supported by its mother so as to preclude the need for welfare, then its rights to legitimacy and paternal support are terminated two years after its birth. (*Pickett* v. *Brown*, 638 S.W.2d 369; J.A. 21). On the other hand, if the child born out of wedlock is less fortunate economically—thus requiring welfare—its right to legitimacy and paternal support may be enforced up to its eighteenth birthday. (*Tennessee Department of Human Services* v. *Lumley*, 638 S.W.2d 381 (Tenn. 1982).

On its face, Tennessee Code Annotated, § 36-224(2) discriminates irrationally against the unacknowledged illegitimate child whose mother is not in the public charge category before its eighteenth birthday.

This issue was squarely addressed in the case of *Wales* v. *Gallan*, 306 N.Y.S.2d 614, wherein the court held:

> * * * it is entirely irrational and arbitrary to differentiate in the right of a child to the possible benefits of a suit to establish his paternity, depending on whether the child or his mother is or is not a public charge during this first [18] years. The child's status for the rest of his life may be adversely affected on the basis that lacks rational connection with his deprivation. at 618

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[13] The clause: "likely to become a public charge" refers to an unborn child.

2) The Statute Serves No Legitimate State Interest.

There exists two purposes for the dual statute of limitations, and the one negates the other.

First, the major purpose of a statute of limitations is the protection of a respondent or defendant from stale or fraudulent claims. Second, the statute is designed to protect the public purse. A contrary result, however, is ensured.

A non-welfare mother who finds her suit blocked by the shorter statute of limitations needs only terminate her employment and place herself and her child on the public welfare roles to circumvent the two-year statute of limitations. Thus, the two-year statute of limitations has the effect of encouraging mothers of children born out of wedlock to go on welfare in order to legitimate their children. This is contrary to the statute's intended purpose and the public policy of Tennessee.

The Attorney General strenuously argues that the two-year statute of limitations is to prevent "stale and fraudulent" claims. The dual statute of limitations does not appear to serve this purpose, since the putative father remains vulnerable to a paternity suit for eighteen years if the child ever becomes a public charge. "The justification for the difference in limitations is even more doubtful considering that the paternity statute is primarily intended to 'secure the health and well being' of children." *Wales* v. *Gallan*, at 617.[14]

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[14] The statute promotes—to a degree—the prosecution of stale claims. This petition was filed when Jeffrey Lee Pickett was 9 years old. By the state's logic, the petition should be dismissed as stale. But if the child becomes a public charge next year, at age 16, the case must be tried. Logically the case should be "staler" next year than 5 years ago. The purported object sought by the state (the prevention of stale claims) is not accomplished by the present statutory scheme.

To say the application of the statute of limitations in paternity cases is justified by the state's interest in preventing stale claims is even more absurd when considered in light of Tennessee Code Annotated, section 28-1-106 which reads:

> PERSONS UNDER DISABILITY ON ACCRUAL OF RIGHT. If the person entitled to commence an action is, at the time the cause accrued, either within the age of eighteen (18) years, or of unsound mind, such person, or his representatives and privies, as the case may be, may commence the action, after the removal of such disability, within the time of limitation for the particular cause of action, unless it exceed three (3) years, and in that case within three (3) years from the removal of such disability.

"The legal disability statute represents a long-standing policy of the state of Tennessee to protect potential causes of actions by minors during the period of their minority." *Parlato* v. *Howe*, 470 F. Supp. 996 (E.D. Tenn. 1979). In every form of action in Tennessee other than paternity, the statute of limitations is tolled during a child's minority.

Common sense dictates that a personal injury suit brought 10 to 15 years after the event could present no greater problems of proof than a 10 or 15 year old paternity suit. The reverse is more likely, for now a purported father may avail himself of the benefits of an HLA blood test to disprove his paternity.[15]

F. The Statute More Strictly Limits The Right To Support Of Illegitimate Children Than Of Legitimate Children.

A child born out of wedlock has a right to support from his father (Tennessee Code Annotated § 36-223, *Brown* v.

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[15] See: *Little* v. *Streater*, 452 U.S. 1, 6-8 (1981); *Mills Habluetzel*, 102 S.Ct. 1549 note 4 (1982).

Thomas, (Tenn. 1968) 426 S.W.2d 496). His mother, as caretaker and natural guardian, merely serves as a proper person to receive the support benefits due and owing a child born out of lawful wedlock, and she cannot contract away the child's right or release the putative father's obligation (*Reynolds* v. *Richardson*, 483 S.W.2d 747 (Tenn. App. 1971), cert. denied, *Reynolds* v. *Tennessee*, 410 U.S. 944 (1973), modified by *Pickett* J.A. 21, at 34). A right of a child born out of wedlock to obtain support is a continuing right until the child reaches the age of eighteen years. This right may be enforced by a paternity suit under Tennessee Code Annotated § 36-222, *et. seq.*, which is both an action to determine paternity and an action for child support.

Tennessee Code Annotated § 36-224(2) imposes a two-year statute of limitations within which the right of a child born out of wedlock to parental support must be asserted, unless the child is or is about to become a public charge; but no such limitation is imposed on the support rights of a child born in wedlock who has a court enforceable right to support in Tennessee until age eighteen. By enacting this statutory limitation on the time in which paternity actions may be brought, the legislature is treating children born out of lawful wedlock differently from children born in wedlock. Because of this statute, the rights of a child born out of wedlock to support may be foreclosed forever by the failure of his mother to file a suit through her ignorance, neglect, or collusion with the father and through no fault of the child.

This differing treatment unconstitutionally discriminates between legitimate and illegitimate children. See also: (*Stringer* v. *Dudoich*, 583 P.2d 462 (N.M. 1978); *Cessna* v. *Montgomery*, 329 N.E.2d 861 (Ill. 1975), overruled by *Cessna* v. *Montgomery*, 63 Ill. 2d 71, 344 N.E.2d

447 (1976); *Florida* v. *West*, 378 So.2d 1220; (Fla. 1979); *State* v. *Wilson*, 634 P.2d 172 (Mont. 1981); *Lenoir County* v. *Johnson*, 264 S.E.2d 816 (N.C. 1980); *Palmer* v. *Mangum*, 338 So.2d 1002 (Miss. 1976); *Huss* v. *DeMott*, 524 P.2d 743 (Kan. 1974); and *Kaus* v. *Sing Chawla*, 522 P.2d 1198 (Wash. Ct. App. 1974) all of which hold that limitations on paternity suits or child support suits by illegitimates are unconstitutional in their entirety or as they apply to illegitimate children.

Tennessee's Two-Year Statute Of Limitations In Paternity Cases Denies Appellants Their Constitutionally Protected Right To Due Process.

I.

A. Children In Tennessee Have A Right To Support From Both Their Parents.

T.C.A. § 34-101. Fathers and mothers are joint natural guardians of their minor children, and they are equally and jointly charged with their care, nurture, welfare, education, and support, and also with the care, management and expenditure of their estates. * * *

T.C.A. § 36-223. The father of a child born out of wedlock is liable for the necessary support and education of the child. * * *

T.C.A. § 36-828. In a suit for annulment, divorce or separate maintenance, where the custody of a minor child or minor children is a question, the court may, notwithstanding a decree for annulment, divorce or separate maintenance is denied, award the care, custody and control of such child or children to either of the parties to the suit, or to some suitable person, as the welfare and interest of the child or children may demand, and the court may decree that suitable support be made by the natural parents or those who stand in the place of the natural parents by adoption. Such decree shall remain within the control of the

> court and be subject to such changes or modification as the exigencies of the case may require.

This obligation of support is a statutory duty owed to the child by his parents. In the event of nonsupport, the child has a legal right to sue his father, and if need be, to prove his paternity.

> T.C.A. § 36-224. A petition to establish paternity of a child, * * * and to compel the father to furnish support and education for the child, * * * may be filed by the mother, or her personal representative, or . . . * * * After the death of the mother or in case of her disability said petition may be filed by the child acting through a guardian or next friend.

In *Rose Funeral Home, Inc.* v. *Julian*, (Tenn. 1940) 144 S.W.2d 755, 756 the court held: ". . . it is logically held that such a decree [speaking of child support] relates merely to the relative rights and duties of the parent toward each other. Since the child is not a party to such suit, the child's rights as against the father are not affected." The court further held at page 757: "An agreement by the mother to perform her statutory duty does not discharge the father's statutory obligation."

In *Reynolds* v. *Richardson*, *supra*, the court allowed the child to maintain an action in its own name after finding that the mother had released her right to sue the father. Although *Reynolds* has been modified by *Pickett*, the court in *Pickett* acknowledges that a child has a right to bring a paternity suit in its own name after the mother's death or disability.

Thus, a child has a cause of action for support. It is well settled that ". . . a cause of action is a species of property protected by the Fourteenth Amendment's due process clause." *Logan* v. *Zimmerman Brush Co.* 102 S.Ct. 1148, 1154 (1982).

B. Children Have A Right To The Companionship, Care, And Management By Their Parents.

In *Lassiter* v. *Department of Social Services*, 452 U.S. 18, at 38, Mr. Justice Blackmun wrote for the dissent:

> At stake here is "the interest of a parent in the companionship, care, custody, and management of his or her children." *Stanley* v. *Illinois*, 405 U.S. 645, 651 (1972). This interest occupies a unique place in our legal culture, given the centrality of family life as the focus for personal meaning and responsibility. "[F]ar more precious . . . than property rights," *May* v. *Anderson*, 345 U.S. 528, 533 (1953), parental rights have been deemed to be among those essential to the orderly pursuit of happiness by free men, *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923), and to be more significant and priceless than " 'liberties which derive merely from shifting economic arrangements.' " *Stanley* v. *Illinois*, 405 U.S. at 651, quoting *Kovacs* v. *Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring). Accordingly, although the constitution is verbally silent on the specific subject of families, freedom of personal choice in matters of family life long has been viewed as a fundamental liberty interest worthy of protection under the Fourteenth Amendment. *Smith* v. *Organization of Foster Families*, 431 U.S. 816, 845 (1977); *Moore* v. *East Cleveland*, 431 U.S. 494, 499 (1977) (plurality opinion); *Prince* v. *Massachusetts*, 321 U.S. 158, 166 (1944); *Pierce* v. *Society of Sisters*, 268 U.S. 510, 534-535 (1925); *Meyer* v. *Nebraska*, 262 U.S. at 399. Within this general ambit of family integrity, the court has accorded a high degree of constitutional respect to a natural parent's interest both in controlling the details of the child's upbringing, *Wisconsin* v. *Yoder*, 406 U.S. 205, 232-234 (1972); *Pierce* v. *Society of Sisters*, 268 U.S. at 534-535, and in retaining the custody and companionship of the child, *Smith* v. *Organization of Foster Families*, 431 U.S. at 842-847; *Stanley* v. *Illinois*, 405 U.S. at 651.

At stake here is an illegitimate child's right to the pursuit of the happiness generally afforded "free men." That is, a family life, the bond of father and son, and a peace of mind which accompanies the knowledge that one is not a "bastard." The constitution protects as a "property right" the interests of the parents. Conversely, the child has a constitutionally protected right to have parents and to be supported and cared for by his parents.

C. Children Have A Right To Establish Their Paternity.

At this time, there exists no legal decision granting to children born out of wedlock a constitutionally protected right to establish their paternity.[16] Quite the contrary, those few rights that illegitimate children have, have been grudgingly granted only as a result of United States Supreme Court decisions within the past 15 years.[17]

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[16] "In taking the position that a child born out of wedlock has a right to have its paternity ascertained in a fair and efficient manner, the Committee acknowledges that legislation must recognize the interest primarily at stake in the paternity action to be that of the child. Since the child cannot act on his own behalf in the short time after his birth when there is hope of finding its father, the committee feels a mechanism should be provided to ascertain the child's paternity whenever it seems that this would both be possible and in the child's best interest." 1974 U.S. Code Cong. and Adm. News, p. 8155.

[17] *Levy* v. *Louisiana*, 391 U.S. 68 (1968); *Glona* v. *American Guarantee and Liability Insurance Co.*, 391 U.S. 73 (1968); *Boddie* v. *Connecticut*, 401 U.S. 371 (1971); *Stanley* v. *Illinois*, 405 U.S. 645 (1972); *Weber* v. *Aetna Casualty and Surety Co.*, 406 U.S. 164 (1972); *Gomez* v. *Perez*, 409 U.S. 535 (1973); *Jimenez* v. *Weinberger*, 417 U.S. 628 (1974); *Mathews* v. *Lucas*, 427 U.S. 495 (1976); *Trimble* v. *Gordon*, 430 U.S. 762 (1977); *Lalli* v. *Lalli*, 439 U.S. 259 (1978); *Parham* v. *Hughes*, 441 U.S. 347 (1979); *Caban* v. *Mohammed*, 60 L.Ed. 297 (1979); *Mills* v. *Habluetzel*, 102 S.Ct. 1549 (1982).

As Mr. Justice Powell stated for the court in the *Weber* case: "

> The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent."

406 U.S., at 175.

The parents are directly responsible for introducing the child into this world; and they should be equally directly responsible to such child to provide it with care, education, and support. This concept has been accepted with regard to legitimate children, but not so with children born out of wedlock. The man is jointly responsible only if the woman files a paternity suit within two years after the birth of the child (with irrelevant exceptions for purposes of this argument).

This law, and its concept, is a blatant declaration of male supremacy, a throwback to the days when laws were made by men for men. It represents the idea that it was the woman who got pregnant and not the man so she should bear the responsibility for her act—not the man.[18] In essence, the legislature is condemning the actions of

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[18] "The enforcement of child support obligations is not an area of jurisprudence about which this country can be proud." 1974 U.S. Code Cong. and Adm. News, p. 8146-8147.

the mother while encouraging the acts of the man. Such laws no longer have a place in modern society.[19]

Mr. Justice Blackmun stated for the dissent in *Lassiter* v. *Department of Social Services*, 452 U.S. 18 (1979):

> Ours, supposedly, is "a maturing society," *Trop* v. *Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion), and our notion of due process is, "perhaps, the least frozen concept of our law." *Griffin* v. *Illinois*, 351 U.S. 12, 20 (1956) (concurring opinion). If the Court in *Boddie* v. *Connecticut*, 401 U.S. 371 (1971), was able to perceive as constitutionally necessary the access to judicial resources required to dissolve a marriage at the behest of private parties, surely it should perceive as similarly necessary the requested access to legal resources when the State itself seeks to dissolve the intimate and personal family bonds between parent and child.

The time has come to recognize the antiquity and lack of reasoning behind our laws limiting the rights of children born out of wedlock. The time has come to recognize that an illegitimate child has a constitutionally protected interest in establishing his parentage.

D. Children Have A Fair Right And Reasonable Opportunity To Be Heard On Their Right To Support And Paternity.

T.C.A. section 36-223 states that the father of a child born out of wedlock is liable for the child's support.

Pickett holds that this duty of support, and the child's right to receive this support, terminates upon the child's

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[19] As stated by the Court in *Levy* v. *Lousiana*, 391 U.S. 68, at 70-71: "We have been extremely sensitive when it comes to basic civil rights (*Skinner* v. *Oklahoma*, supra, at 541; *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 669-670) and have not hesitated to strike down invidious classification even though it had history and tradition on its side."

second birthday—if the child's mother has failed to file suit (and the exceptions do not apply). In other words, the effect of the statute is to terminate every right which the child would otherwise enjoy, through no fault of his own. The statute cuts off the rights of illegitimate children without notice or hearing procedures. As was stated in *Logan*, page 1154, this is " 'the equivalent of denying them an opportunity to be heard upon their claimed right[s].' *Boddie* v. *Connecticut*, 401 U.S. 371, 380 (1971).[20]

E. Appellant, Frances Annette Pickett, Has A Property Interest Protected By The Fourteenth Amendment.

Ms. Pickett has two causes of action against the child's father. One is a right to seek his financial contribution toward support of the child (T.C.A. § 34-101 and § 36-223). The other is a cause of action to establish paternity afforded by T.C.A. § 36-224. As stated at page 20, a cause of action is recognized as a property interest protected by due process.

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[20] At page 1154, footnote 5 the court continues: "The Court's cases involving the right of access to courts provide an analogous method of analysis supporting our reasoning here. In *Boddie*, the Court established that, at least where interests of basic importance are involved, 'absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.' " 401 U.S. at 377.

II.

A. Tennessee's Statutory Scheme By Which Illegitimate Children Must Enforce Their Support Rights Deprives Jeffrey Lee Pickett Of His Right To Due Process Of Law Under the Fourteenth Amendment.

The Tennessee Supreme Court has found in *Pickett*, at page 23:

> Since the mother is the party primarily authorized by the statute to bring the action, and thus of necessity makes a decision which is binding on the child, we agree with those courts which have held that, for a myriad of reasons, she is the best qualified person to do so. The state has determined that the mother should be allowed to make this important decision, as it is essentially a private matter.

It is unjust and a denial of due process to place a child's right to paternal support and legitimacy in the hands of its mother. The statute of limitations as drafted allows a child's right to paternal support to terminate before the child has any real opportunity to assert it.

Permitting a child's mother to institute paternity proceedings on behalf of her offspring does not satisfy the requirements of due process because the mother's short term interests,[21] i.e., continuing fondness for the father or her reluctance publicly to reveal her indiscretion, may conflict with the child's long-term interests of support and legitimation. (*Florida* v. *West*, 378 So.2d 1220, at (1980)).

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[21] "Financial difficulties caused by child-birth expenses or a birth-related loss of income, continuing affection for the child's father, a desire to avoid disapproval of family and community, or the emotional strain and confusion that often attend the birth of an illegitimate child all encumber a mother's filing of a paternity suit . . ." *Mills* v. *Habluetzel*, 102 S.Ct. 1549 (1982). See brief of *Amici Curiae*, p. 15 n. 8.

In Kansas the court found that a minor child was not bound by the limitation of action that may apply to its mother (*Huss* v. *DeMott*, 215 Kan. 450, 524 P.2d 743). The reasoning of the court was based upon the fact that the mother's inaction or improper action in asserting a timely claim should not prejudice a minor child (at pg. 746).

> The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children. * * * As with so many other legal presumptions, experience and reality may rebut what the law accepts as a starting point; the incidence of child neglect and abuse cases attests to this. That some parents "may at times be acting against the interests of their children" as was stated in *Bartley* v. *Kremens*, 402 F. Supp. 1039, 1047-1048 (ED Pa. 1975), vacated and remanded, 431 U.S. 119 (1977), creates a basis for caution . . . *Parham* v. *J.R.*, 442 U.S. 584, 602.

This principal is usually stated in terms of the child's "parents." In a paternity suit, the child is limited to the guidance and decision-making ability of its mother. *Parham* states that the parent usually has the maturity, experience, and capacity for judgment which the child lacks. It is true that the child will lack these qualities, but we must question whether the mother, in the context of a paternity suit, is possessed of these qualities.

Her decision to seek support (or waive it, if knowingly made) must be made within two years after the birth of a child born to her without a husband (*Pickett* J.A. 38-39). One must immediately call in to question her judgment and ability to make decisions. Logically, she will be under

severe pressures. Under these circumstances, two years is not long enough to decide whether to take the child's father to court. Statistically speaking, the mother of a child born out of wedlock is probably herself a minor at the time her child is born.

This court has held unconstitutional a Missouri statute granting parents an absolute veto over a minor child's decision to have an abortion. *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976). The same logic applies here. The child's interest in being legitimate; the child's interest in receiving the benefit of support from both his parents; the child's interest in the companionship, care and custody of his parents; these interests are so important, so basic to our American way of life, that "Due Process" can not allow the child's mother to waive these rights by her inaction or refusal to act within two years after the child's birth.

B. Tennessee's Statutory Scheme By Which Illegitimate Children Must Enforce Their Support Rights Deprives Appellants Of Their Right To A Fair And Reasonable Opportunity To Be Heard On Their Right To Support And Paternity.

Children in Tennessee have a right to support from both parents (T.C.A. § 34-101 and § 36-223). The right of legitimate children to this support is on-going (*Blackburn* v. *Blackburn*, 526 S.W.2d 463 (Tenn. 1975). That is, each day a new cause of action for support commences. The action can be commenced at birth if the parents have separated or any time prior to the child's 18th birthday. *Gomez* v. *Perez*, 409 U.S. 535 (1973) holds that if this right exists for legitimate children, then it must exist for illegitimate children.

In Tennessee however, this right terminates for the illegitimate child upon its second birthday if the child's

mother fails to act. For legitimate children, the mother's nonaction does not waive the child's rights, *Rose Funeral Home, supra.* at page 757. Ignoring the obvious equal protection question raised by this distinction, the two-year period of limitations is a denial of due process.

The statutory scheme, by which illegitimate children in Tennessee must enforce their rights to support from their natural fathers, carries with it two defects. The first is the two-year statute of limitations on paternity actions incorporated in section 36-224(2). The second is the absence of any procedure affording a reasonable opportunity for a suit to be brought on the minor's behalf within this period (or for a suitable representative of the minor, with presumptive knowledge of the limitations period and the significance of the paternity action, to decide nonetheless not to file such a suit). The result is that an illegitimate child may be barred from pursuing his paternity (and thus support) claim when there has been no constitutionally meaningful opportunity for that child or its representative to be heard on the claim. See, *Armstrong* v. *Manzo*, 380 U.S. 545 (1965).

A fundamental requirement of due process is the "opportunity to be heard." *Grannis* v. *Ordean*, 234 U.S. 385 (1914). "It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo*, 380 U.S. 545 (1965). To be meaningful, that opportunity must involve at least some notice of a threatened deprivation of interests that due process protects, *Memphis Light Gas & Water Division* v. *Cratt*, 436 U.S. 1 (1978); *Goldberg* v. *Kelly*, 397 U.S. 290 (1970); *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306 (1950). The procedures governing the initiation and the conduct of any hearing must be sufficient to ensure a litigant a fair opportunity to present his claim of

entitlement (or continued entitlement) to the interests that due process protects. *Memphis Light Gas & Water Division, supra; Mathews* v. *Eldridge*, 424 U.S. 319 (1976). Moreover, where "persons [are] forced to settle their claims of right and duty through judicial process," *Boddie* v. *Connecticutt*, 401 U.S. 371, 377 (1971), the government may be required to facilitate such individual's access to the judicial process. *Id.* (state required to pay filing fees for indigents in divorce proceedings).

Here, the opportunity the illegitimate child has to have his paternity and support claim heard simply is not "meaningful" under any understanding of that term permitted by this court's decisions. Tennessee Code Annotated § 36-224(2) states that the illegitimate child may enforce his right to support only by a paternity suit filed within two years of his birth (unless acknowledged in writing or by the furnishing of support). But the infant himself is without ability to assert this right. Tennessee requires that this right be asserted by the child's mother.

Tennessee does not give the mother notice of the consequences of failing to file such a suit within two years, even though it would be easy—by a simple notice on all birth certificates for example—for it to do so. Nor is there, in instances in which the mother is aware of the two-year statute of limitations and wishes to file suit on her child's behalf, any mechanism for ensuring that she will be able to do so.

The state, to be sure, also has an interest in securing paternal support for the illegitimate child, if only because of the possibility that if child support is not secured, the child may become a public charge. See *Dandridge* v. *Williams*, 397 U.S. 471 (1970). Indeed, Title 4-D of the

Social Security Act, 42 U.S.C. § 654(4) (1980), requires the state to "establish the paternity" of every child eligible for AFDC. For illegitimate children whose mothers apply for AFDC, there is no statute of limitations in Tennessee, see: *Tennessee Department of Human Services* v. *Lumley*, 638 S.W.2d 381 (Tenn. 1982). The problem, of course, is that there is no reasonable assurance that any individual illegitimate child will be eligible for AFDC before his eighteenth birthday, or that his mother will apply on his behalf, thus triggering the state's obligation to "establish paternity" on the child's behalf.

In sum, Tennessee has established a procedure for judicial enforcement of illegitimate children's rights to support from their natural fathers. Under that procedure, the right to support is lost without notice of the two-year statute of limitations. That procedure cannot withstand constitutional scrutiny. The opportunity to be heard "in a meaningful manner," *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965) requires more; at least where the individual whose due process rights are at stake is an infant child incapable of protecting his own interests. It requires notice of the two-year statute of limitations on paternity actions to a presumptively suitable representative of the illegitimate infant and notice that the failure to establish paternity extinguishes the support claim from its natural father. If such a notice is given, then the representative can make a knowing decision about whether to pursue the infant support claim. See *Memphis Light Gas & Water Division* v. *Cratt*, 436 U.S. 1 (1978), *Goldberg* v. *Kelly*, 397 U.S. 290 (1970). And if due process requires that there be some minimally fair procedure to ensure the effective assertion of that claim, see *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), *Boddie* v. *Connecticut*, 401 U.S. 377 (1971), it requires as well a procedure that,

unlike the one here, provides a realistic opportunity for the claim to be heard on its merits.

While the Tennessee legislature may elect not to confer a property interest in children to receive support from their parents, it may not constitutionally authorize a deprivation of such an interest, once conferred, without procedural safeguards. Once the right is conferred, the party possessing the right must be given a meaningful opportunity to exercise his right.

C. What Are The State's Rights And Interests And Legitimate Concerns?

The child's and mother's interests have been examined. There remains the problem of assessing the state's interest. That interest is two-fold:

1. to prevent stale claims; and
2. to protect the public purse.

One obvious solution to this entire problem is for the state to appoint counsel to represent the interests of every illegitimate child soon after the child's birth, if not during the pregnancy. Appointed counsel could then make an investigation and report to the court on the possibility of legitimating the child.

In Shelby County, Tennessee, this procedure is already in effect for all illegitimate children whose mothers apply for welfare assistance (AFDC). The additional increase in work would be minimal and the savings great.

The state's reply would presumably be—we have a right to avoid the cost and administrative inconvenience that might accompany such a program. Upon reflection however, this proposed solution would serve both the state's interests. First, it would prevent the litigation of

stale claims. Second, it would substantially reduce the child's future need to apply for welfare assistance. The cost of one month's welfare far exceeds the cost of appointed counsel.[22] The state's fiscal interest is thus so small when compared to the interests of the child and mother, as to be nominal.

The cost of such a program has been reduced even further by the United States Congress. 42 U.S.C. § 655 provides that the state will be reimbursed by the federal government 50 to 90 percent of the cost of setting up and maintaining a program to establish paternity and enforce child support. Congress did not intend for these services to be limited to children receiving AFDC assistance.[23]

42 U.S.C. § 654(6) provides that child support and paternity services shall be made available to persons who are not receiving welfare assistance. Again, the federal government will assist the state with the cost.[24]

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[22] The present program in Shelby County, Tennessee, began July, 1977. The program pays appointed counsel $60 for a preliminary report resulting in a consent order of paternity. If the matter is set for a hearing in the juvenile court and paternity is admitted or there is an adjudication on the merits without the intervention of a jury, counsel receives $120. If the case is concluded before a jury, counsel receives $240.

Under this program, collection of child support payments for illegitimate children has increased from $1,786,204.49 in 1977 to $4,589,771.60 in 1981; an increase far exceeding the payments to appointed counsel. (Annual Report-1981; Juvenile Court of Memphis and Shelby County, Tennessee, p. 11 (Appendix, page 8).

[23] 42 U.S.C. § 655 is set out in the appendix, page 10.

[24] 42 U.S.C. § 654 is set out in the appendix, page 12. This program is already in force in Tennessee. Appellants' present counsel was appointed by the juvenile court pursuant to this section.

The child and mother have an interest (in access to the court to prove paternity) which far exceeds the state's interest in limiting access to the court to two years after the child's birth. The solution elected by the state, announced in Tennessee Code Annotated, section 36-224 (2), is not rationally related to the state's interests, and fails to meet the standards required by "due process." Accordingly Tennessee Code Annotated, section 36-224 (2), insofar as it seeks to limit a child's right to access to a judicial forum to seek support from his father, is unconstitutional.

CONCLUSION

The foregoing considered, appellants respectfully pray that the judgment of the Supreme Court of Tennessee upholding the constitutionality of Tennessee's two-year statute of limitations, as set out in Tennessee Code Annotated, section 36-224(2), be reversed and the judgment of the Juvenile Court of Memphis and Shelby County, Tennessee, be affirmed.

Respectfully submitted,

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1981 VITAL STATISTICS SUMMARY
MEMPHIS - SHELBY COUNTY, TENNESSEE

POPULATION

The 1981 mid-year population for the Memphis-Shelby County community was estimated at 785,000, an increase of 6,000 from the 1980 figure of 779,000. The white population was estimated at 444,000 (57%) while the non-white figure was 341,000. The 1982 mid-year estimates are 443,000 (56%) - white, 348,000 - non-white, and 791,000 - total.

MIGRATION

An analysis of the 1970 and 1980 census data and the birth/death resident data for the decade of the '70s indicates a pattern of "white flight" from Shelby County and an influx of non-whites during the 10 year period. The white population had a net out-migration of 37,000, while the non-white population showed a net in-migration of 23,000 for the decade. Combined, the result was a net out-migration of 14,000 for the community for the 10 year period or 1,400 annually leaving the community.

LIVE BIRTHS

The highest total of resident live births in the last 10 years was recorded in 1981 - 13,891. White births increased from 6,057 in 1980 to 6,323 in 1981 - the highest total since 1972 - while non-white births declined for the first time in 6 years from 7,711 in 1980 to 7,568 in 1981. The white birth rate of 14.2 births per 1,000 population was the highest in 10 years, while the non-white figure of 22.2 was the lowest in the last 3 years. The overall community rate of 17.7 was unchanged from 1980. Including 3,711 non-resident births, a total of 17,602 live births occurred in Memphis & Shelby County in 1981, 302 more than in 1980.

ILLEGITIMACY

Illegitimacy declined for the first time in 8 years with 4,837 births being recorded as illegitimate in 1981, down from the

record 4,913 set in 1980. The white total of 413 in 1981 was a record high, while the non-white figure of 4,424 was a decline over 100 from the record 4,542 in 1980. The community illegitimacy per cent of 34.8 was the second highest on record matching the 1979 figure but falling below the record 35.7% set in 1930. The white per cent of 6.5% was a new record while the non-white per cent of 58.5% was the second highest on record exceeded only by the 1980 figure of 58.9%.

PREMATURITY

The per cent of babies classified as premature (weighing less than 5.5 lbs. or 2,500 gm.) topped 10% in 1981 with a community figure of 10.3%. The 1980 figure, was 9.6%. The white prematurity per cent of 5.9% exceeded the 1980 figure of 5.3%, and the non-white, figure of 14.0% was also higher than the 1980 figure of 13.1%.

AGES OF MOTHERS

Over 2,500 new mothers in 1981 were teenagers (2,536 - 18%); almost 1,100 (1,094 - 8%) were under 18 years of age. 10% of the white mothers were teenagers, while 15% of the non-white babies were born to teenage mothers. 39% of the illegitimate babies had teenage mothers. Only 7% of the legitimate babies had teenage mothers.

INFANT MORTALITY

The number of infant deaths (under 1 year of age) in the community declined in 1981 from 223 in 1980 to 221. This slight decrease, combined with an increase in total births, resulted in a reduction in the overall infant mortality rate from the figure of 16.2 in 1980 to 15.9 infant deaths per 1,000 live births recorded in 1981, the fourth lowest rate on record. The record, 14.8, was recorded in 1978. The white infant mortality rate of 7.9 was a record low. The non-white rate of 22.6 was the highest rate since 1974.

DEATHS

Approximately 200 fewer resident deaths occurred in Memphis and Shelby County in 1981 (6,424) than in 1980 (6,628). The community death rate fell from 8.5 deaths per 1,000 population in 1980 to 8.2, the fourth lowest rate on record. White deaths increased from 3,508 to 3,592, while non-white deaths dropped almost 300 deaths from the record 3,120 in 1980 to 2,832 in 1981. The white death rate rose from 7.9 to 8.1 while the non-white rate tied the record low figure of 8.3 set in 1978; the 1980 non-white rate was 9.3. With 2,211 non-resident deaths, a total of 8,635 deaths occurred in Shelby County in 1981.

TEN LEADING CAUSES OF DEATHS

Diseases of the heart (2,429 - 37.8%), cancer (1,260 - 19.6%), and stroke (551 - 8.6%), continued to be the leading causes of death in Shelby County in 1981 and accounted fro 2/3 of all resident deaths. The other leading causes were (4.) respiratory diseases (471), (5.) accidents (179), (6.) circulatory system diseases (176), (7.) digestive system diseases (170), (8.) homicides (145), (9.) urinary system diseases (138), and (10.) certain perinatal conditions (125).

Prepared by:

Memphis & Shelby County
Health Department

3/8/82

BIRTHS TO TEENAGE MOTHERS, 1977-1981*
MEMPHIS-SHELBY COUNTY, TN RESIDENTS

YEAR	AGE 15-19 POP.	BIRTHS IN AGE GROUP	% OF TOTAL BIRTHS	FERTILITY RATE**
1977	39,400	2,704	20.9	6.86
1978	38,500	2,740	20.9	7.12
1979	37,700	2,800	20.2	7.42
1980	36,800	2,616	19.0	7.11
1981	35,400	2,448	17.6	6.92
1982	34,300			

*Excludes Under Age 15 pregnancies (annual average = 98)
**Rate per 100 women age 15-19

BIRTHS TO MOTHERS AGE 20-44, 1977-1981
MEMPHIS-SHELBY COUNTY, TN RESIDENTS

YEAR	AGE 20-44 POP.	BIRTHS IN AGE GROUP	% OF TOTAL BIRTHS	FERTILITY RATE*
1977	144,000	10,084	78.3	7.00
1978	148,000	10,257	78.3	6.93
1979	152,000	10,964	79.0	7.21
1980	156,000	11,051	80.3	7.08
1981	159,000	11,353	81.8	7.14
1982	163,000			

*Rate per 100 women age 20-44

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1981 RESIDENT LIVE BIRTHS
BY RACE, AGE OF MOTHER, AND LEGITIMACY STATUS

Age of Mother	*WHITE*			*NON-WHITE*			*TOTAL*			
	Legit	*Illeg.*	*Total*	*Legit*	*Illeg.*	*Total*	*Legit*	*Illeg.*	*Total*	*%*
Under 15	0	5	5	0	83	83	0	88	88	0.6
15-17	104	73	177	34	795	829	138	868	1,006	7.2
18-19	350	66	416	166	860	1,026	516	926	1,442	10.4
Teenage Totals	454	144	598	200	1,738	1,938	654	1,882	2,536	18.2
20-39	5,429	269	5,698	2,914	2,672	5,586	8,343	2,941	11,284	81.3
40-44	27	0	27	29	13	42	56	13	69	0.5
45 +	0	0	0	1	1	2	1	1	2	0.0
TOTAL	5,910	413	6,323	3,144	4,424	7,568	9,054	4,837	13,891	100.0

RESIDENT LIVE BIRTHS: 1979-1981
BY RACE, AGE OF MOTHER, AND LEGITIMACY STATUS

	LEGITIMATE			*ILLEGITIMATE*			*TOTALS*		
WHITE	*1979*	*1980*	*1981*	*1979*	*1980*	*1981*	*1979*	*1980*	*1981*
Under 15 Yrs.	1	3	0	9	3	5	10	6	5
15-17	152	121	104	71	60	73	223	181	177
18-19	371	395	350	70	76	66	441	471	416
Teenage Total	524	519	454	150	136	144	674	658	598
20+	5,278	5,167	5,456	212	232	269	5,490	5,399	5,725
TOTALS	5,802	5,686	5,910	362	371	413	6,164	6,057	6,323
NON-WHITE									
Under 15 Yrs.	2	0	0	93	91	83	95	91	83
15-17	74	31	34	927	886	795	1,001	917	829
18-19	226	171	166	909	876	860	1,135	1,047	1,026
Teenage Total	302	202	200	1,929	1,853	1,738	2,231	2,055	1,938
20+	2,936	2,967	2,944	2,543	2,689	2,686	5,479	5,656	5,630
TOTALS	3,238	3,169	3,144	4,472	4,542	4,424	7,710	7,711	7,568
TOTALS									
Under 15 Yrs.	3	3	0	102	94	88	105	97	88
15-17	226	152	138	998	946	868	1,224	1,098	1,006
18-19	597	566	516	979	952	926	1,576	1,518	1,442
Teenage Total	826	721	654	2,079	1,992	1,882	2,905	2,713	2,536
20+	8,214	8,134	8,400	2,755	2,921	2,955	10,969	11,055	11,355
TOTALS	9,040	8,855	9,054	4,834	4,913	4,837	13,874	13,768	13,891

42 U.S.C. § 655

§ 655. Payments to States

(a) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter, beginning with the quarter commencing July 1, 1975, an amount—

(1) equal to 75 percent of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title,

(2) equal to 50 percent of the total amounts expended by such State during such quarter for the operation of a plan which meets the conditions of section 654 of this title except as is provided by a waiver by the Secretary which is granted pursuant to specific authority set forth in the law, and

(3) equal to 20 percent (rather than the percent specified in clause (1) or (2)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system which the Secretary finds meets the requirements specified in section 654(16) of this title;

except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title.

(b)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) Subject to subsection (d) of this section, the Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c)(1) Subject to paragraph (2), there shall be included, in determining amounts expended by a State during any quarter for the operation of the plan approved under section 654 of this title, so much of the expenditures of courts of such State and its political subdivisions (excluding expenditures for or in connection with judges and other individuals making judicial determinations, but not excluding expenditures for or in connection with their administrative and support personnel) as are attributable to the performance of services which are directly related to, and clearly identifiable with, the operation of such plan.

(2) The aggregate amount of the expenditures which are included pursuant to paragraph (1) for the quarters in any calendar year shall be reduced (but not below zero) by the total amount of expenditures described in paragraph (1) which were made by the State for the 12-month period beginning January 1, 1978.

(3) The State agency may, if the law (or procedures established thereunder) of the State so provides, pay so much of the amount it receives under subsection (a) of this section for any quarter as is payable by reason of the provisions of this subsection directly to the courts of the State (or political subdivisions thereof) furnishing the services on account of which the payment is payable.

(d) Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a) of this section, there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a) of this section.

42 U.S.C. § 654

§ 654. State plan for child and spousal support

A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that such state will undertake—

(A) in the case of a child born out of wedlock with respect to whom an assignment under section 602(a)(26) of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so, and

(B) in the case of any child with respect to whom such assignment is effective, to secure support for such child from his parent (or from any other person legally liable

for such support) and, at the option of the State, from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

(5) provide that, in any case in which support payments are collected for an individual with respect to whom an assignment under section 602(a)(26) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family except that this paragraph shall not apply to such payments (except as provided in section 657(c) of this title) for any month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A of this subchapter;

(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, (B) an application fee for furnishing services under the State plan (other than collection of support) may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary, (C) the State will retain, but only if it is the State which makes the collection, the fee imposed under State law as required under paragraph (19);